

FILE

Q + M

RDS Session with MAG

24 March 71

SECRET

19 MAR 1971

MEMORANDUM FOR: Deputy Director for Support

Jack:

Jabber has put together some of our thoughts on the questions raised by the MAG. Also attached are Jabber's answers to somewhat related questions given directly to us by

25X1

Obviously the questions relating to "rights" are difficult to answer other than in proper context. You could start with "inalienable rights," constitutional rights, etc.--but I assume we must deal with them as employee rights. We did ask Adele if she could put the questions in better context for us. She advised that some of the newer employees came to the conclusion that the only right they had was the "right to resign." I'm afraid that this type of conclusion evolved from a philosophical discussion and you may have to face questions on that basis.

I believe the third question relative to "probationary periods" ties in with the questions given to us directly. MAG may be suggesting that we hire all new professionals under a three-year contract. At the conclusion of this "probationary period" they would be converted to staff employment or let out.

It is interesting that they are concerned about "rights" but a bit ruthless in their desire for "selection-out." Their memo to ExDir re selection-out is a valid one. As indicated in our response, selection-out as a separation technique has been incorporated in our regulations but is not mandatory. Only the Deputy Director for Plans has developed formal procedures leading to possible selection-out.

I hope the attached is of some help to you.

Harry B. Fisher

25X1

Atts

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downgrading and  
declassification

SECRET

I. SELECTION-OUT PROCEDURES

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[ ] states: "SELECTION-OUT. It is the policy of the Agency to improve the overall level of employee performance by separating those employees whose qualifications and potential are low in comparison with those of other employees of the same grade and occupational category. Deputy Directors and Heads of Career Services are responsible for determining the need for, and recommending, the separation of personnel under their jurisdiction."

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With regard to the MAG recommendation in its memorandum of 18 November 1970, I should draw special attention to the last sentence in the above excerpt from [ ] Each Deputy Director, in accordance with our basic Agency personnel management philosophy, is responsible for determining the need for selection-out in his jurisdiction.

The procedures established by the Deputy Director for Plans are in recognition of the size of his Career Service: [ ] employees. The 25X9 Clandestine Service is only one of 23 Agency Career Services. The other 22 Services are in the remaining three Directorates and the Office of the DCI.

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The Clandestine Service procedures would not necessarily fit the needs of the other Deputy Directors, who have looked to the Heads of the Career Services under their respective jurisdictions to take the necessary action authorized in [ ]

At this time, the other Deputy Directors have not seen fit to establish the kinds of formal procedures the DD/P feels he requires in managing his Career Service in terms of selection-out. *Incidentally, no one has yet been selected out of DD/P either.*

GROUP 1  
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downgrading and  
declassification

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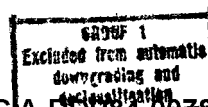
## II. EMPLOYEE RIGHTS

A. Webster defines a right as "that which a person has a just claim to; power, privilege, etc. that belongs to a person by law, nature or tradition; as, It was his right to say what he thought."

No "right" is absolute; for example, an employee does not have a "right" to work for this Agency; nor does he have a "right" to continue in employment with this Agency if he does not meet those standards of employment which may legally be applied by the management of this Agency.

On the other hand, an employee does have the right to appeal an adverse decision by the management of the Agency within or without Regulatory guidelines which constitute the legal structure of our Personnel Management Program.

Employees, we think, certainly have basic human rights in their relationships with each other and with Agency managers. We have attempted to protect these in our Regulatory issuances and we certainly attempt to do so in terms of judgments that often have to be made without the guidelines of Regulations; but human rights again are difficult to define within the context of an organization's declared mission or purpose. Often an individual employee's regard for his human rights will differ in definition from that of management's: Selection-out, for example.



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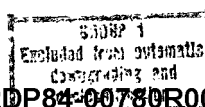
Nevertheless, the legal thrust of our Regulations, in instances where "employee rights" are concerned, is designed to provide traditional means of justice to the employee. The Director's authority to terminate employees is based on law; the procedures established by Regulations are designed to protect the employee's interests in recognition of the fact that he may have no absolute right in such a case.

- B. Again quoting Webster, a benefit is "anything contributing to an improvement in condition; advantage."

Our basic Personnel Regulation, [ ] says, among other things, 25X1 the Personnel objectives of this Agency are to provide employees with (a) opportunities for making the best use of their training and experience; (b) avenues for employment and advancement on the basis of ability and performance; (c) equitable pay; and (d) an environment in which they can find satisfaction in their daily work.

Whatever degree of cynicism one may wish to apply to the efforts we have made over the years in accordance with this statement, the fact remains that our program of benefits and services is a considerable one: Overseas Medical Benefits, Insurance, our Retirement Program including CIARDS, our Casualty Affairs System, etc.

The Career Service concept has been designed to provide employees with opportunities and advantages. Again, one may question the degree to which the Career Service structure has met these requirements, but the effort has been a painstaking and long-range one.

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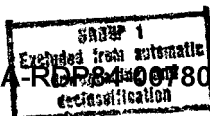
In a sense, benefits can become rights, again recognizing the non-absolute quality of "right." A person admitted to the benefits of the CIA Retirement System whose career after 15 years of service with the Agency is adjudged by the Director of Personnel to be qualified for the System has the right to elect to remain a participant for the duration of his employment and this election will not be subject to review or approval by the Director.

Any number of our benefits are provided our employees by statute, FEGLI, the accumulation of leave, Retirement, etc. In a legal sense, therefore, such benefits are the "right" of the employee so long as he remains employed. This may well affect his post-employment life as well and he has the legal right to carry certain of these benefits into Retirement when that time comes.

- C. Longevity can affect benefits. With seniority, an employee's annual leave benefits increase, naturally, his annuity will increase as will separation compensation if that becomes a factor.

An employee's "rights" as we have attempted to define them above would not be altered by longevity. The change after three years from a career-conditional appointment to a career appointment does not change his "right" to continued employment; it may change the judgment of his managers in terms of career potential and, consequently, his opportunities for advancement and job satisfaction.

It is obvious that longevity will affect managerial judgment to the extent that an employee who has spent 18 years in Agency service has contributed more of his adult life than the employee who has contributed two. Economic factors alone that are often present will require the most

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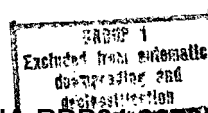
thoughtful reactions of managers to human rights when disciplinary or termination determinations must be made.

- D. I don't think that all employees know exactly what their benefits or their legal rights are as described within the framework of our Regulations, either those based upon law or those based upon internal personnel management philosophy. The Regulations are available; they are printed and distributed every time changes are made; they are augmented by the regular issuances of Headquarters  Bulletins, Book Dispatches, and Memoranda. We try to make this material readily available; but it is, finally, the individual's responsibility to become acquainted with it.

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I doubt even if All Employee Bulletins are read by everyone. I do think that any employee can very easily ascertain the benefits for which he is eligible and the rights he has under Agency Regulations either by immediate consultation with available administrative officers or by direct reference to the Regulatory material. I seriously doubt if there is an employee in this Agency who does not know he has direct access to the Director of Personnel or the Inspector General. I am equally confident that no adverse action has been taken by any segment of this Agency's management without the employee being <sup>apprised</sup> ~~appraised~~ at some point along the line of his right to appeal.

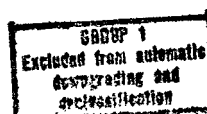
- E. I am assuming that, when one asks if Agency employees feel constrained not to do things people on the outside do freely, the question refers to such ventures as public community action, social enterprises and the like. I think people in this Agency do feel constrained. They cannot discuss their work as others do. They are uneasy in attracting personal attention due to

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the built-in disciplines of working daily in the kinds of things we do. They are often under some cover arrangement and they have been raised in an environment of rigid self-discipline in a security sense. It is admitted that much of this is encouraged and I need cite only our standard Regulation concerning Conduct and Discipline

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### III. PROBATIONARY PERIOD FOR NEW EMPLOYEES

We have in effect two probationary periods for new employees: (a) Every new employee is subject (and is so informed upon entrance on duty) to an initial 12-month trial period to demonstrate the qualifications required for regular assignment and (b) the first three years of employment are provisional during which period the employee's status is that of a Career-Provisional appointee. At the conclusion of the three-year period, he is transferred to Career Status, provided the Head of his Career Service adjudges him to have the motivation and potential for a long-range Agency career.

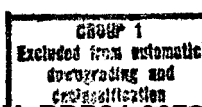
The above 12-month trial period and three-year Career-Provisional period are reserved to Staff appointments.

Staff Personnel include Staff Employees and Staff Agents and are appointed as either Career Employees, Career-Provisional Employees, Reserve Employees or Temporary Employees (an example of this last category would be our Summer-Only Employees).

Contract Personnel are individuals whose services are required to meet needs which normally cannot be met by the assignment of Staff Personnel. This may involve either the nature of the duties to be performed or the qualifications required.

Normally, every contract has a 30-day clause in it which states that the contract may be terminated by either the employee or the Agency.

Staff Personnel are appointed under the authority of the DCI to serve in an employment relationship which entitles them to the normal benefits provided by general Federal Law or Regulation, except as modified in accordance with laws applicable to the Agency.



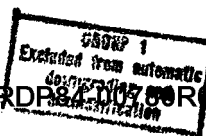
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Contract Personnel enjoy generally the same broad benefits as Staff Personnel but their relationship with the Agency is established in their contractual agreements.

In terms of tenure, Staff Personnel are considered to be Career Employees. While some Contract Employees have served a sufficient number of years to be comparable to working careerists, the termination clause in all contractual agreements is there in recognition of the fact that they are not considered Career Employees and may be terminated at such time as their services are no longer required. *A specified probationary period for contract employees is, therefore, not too meaningful and is not used.*

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MAG questions

1. What are the legal and actual differences in status between:
  - a) first year employment - probationary
  - b) 2nd and 3rd year - career conditional
  - c) 4th year on - career employee?
2. Over the past five years, how many people in each of the above three categories have been separated for cause?
3. What are attrition figures during the first 3 (or 5) years ~~of their~~ for professional employees? I.e., ~~how many~~ what percentage of professional level employees resign during this initial period rather than at later stages of their careers?
4. What would the practical advantages and disadvantages be to hiring all new employees on 3 year contracts with 30-day clauses rather than as staff?
5. Are there statutory or legal bars to changing the length of the present staff probationary period or to enforcing, e.g., something like a 25% attrition rate at the end of it?

5-D-3115

12 1462

Before Wad P.m.

## ROUTING AND RECORD SHEET

SUBJECT: (Optional)

STAT

FROM:

Deputy Director of Personnel  
5E56 HQS

EXTENSION

NO.

DATE

STAT

TO: (Officer designation, room number, and building)

DATE

RECEIVED

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OFFICER'S  
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

5D3115 HQS

Bruce:

I hope the attached is some help to you. It is pretty general in reply to your questions.

I might add, with reference to your question 2, that in this last fiscal year we separated during the first 12-month probationary period 35 employees. This figure does not include those who had to resign after EOD for security or medical reasons. This figure of 35 is a little less than preceding years. It runs generally around 40 a year.

I should point out that these were all resignations in lieu of termination; this is the procedure we use during the 12-month trial period.

Without further study I cannot give you, at this moment, specific answers to your question 3 on attrition. Our general attrition figure is a little over 11% of our population; for professional employees it runs a little over 5%. It is safe to say the attrition figure declines with longevity; in other words, our resignations figures will run higher during the first three years than at any other period of Agency employment.

STAT

1. Since the Director of Central Intelligence Agency has the authority  
STAT  to terminate the employment of any Agency employee, there are no  
legal differences in employment status. The only difference lies in the  
administrative intent as expressed in Agency Regulations. In terms of separation  
for cause, the Director's authority is not always called upon but resignations  
of the individual employees are accepted in lieu of termination.

2. We separate about 180 employees per year for cause. Many of these are  
given the option of resigning in lieu of termination. This figure includes  
those who may be separated during their first 12-month trial period.

3. The attrition rate for professional employees during their first  
three-year provisional period has not been statistically recorded as such.  
Further study in some depth would be necessary to prepare such figures. We  
have, of course, conducted studies concerning the reason for attrition during  
the early years of Agency employment and these studies are available. However,  
as an example of the current Career Service screening process, of approximately

STAT  employees who completed Career-Provisional status and were considered  
for Career employment status during the past three years, all but 49 were  
converted to Career employee status and action on those was deferred. None  
was terminated.

4. & 5. Although the three-year contracts might have some legal appeal,  
we could hardly attract the caliber of people we seek with such an employment  
agreement. Although there are no "legal bars" to changing the length of the  
provisional period, the three-year period is acceptable to the Agency's needs  
as it is to the larger part of the Federal community whose practices we

generally follow in this area. To enforce arbitrarily a pre-determined attrition rate during or at the end of the provisional period has no basis in experience and would certainly seem to deny confidence in our initial screening process. The majority of separations during this period are voluntary and are for personal or job-related reasons. Our concerns have been towards retention of our employees through these early career years and this would seem to be a continuing concern based on our present studies.

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<b>Remarks:</b> Harry: Help! MAG has asked me to discuss the items on the attachment with them during the week of 22 March. I told the MAG emissary that it seemed more appropriate to have the General Counsel and the Director of Personnel to be their discussants on these subjects but I am still on the hook. I would appreciate your advice and counsel on all subjects. I have also given a copy to the General Counsel requesting his particular assistance on the Employee Rights items.			
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		John W. Confey	<div style="border: 1px solid black; width: 50px; height: 30px; display: inline-block;"></div> 25X1
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**CONFIDENTIAL**

1. Selection Out Procedures

Discuss MAG recommendation as outlined in memo to EX/DIR dated 18 November 1970 (copy attached).

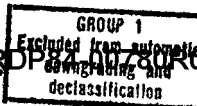
2. Employee Rights

- a. What are "rights"?
- b. When does a benefit become a right?
- c. Does the relationship change with longevity?
- d. Do employees know exactly what their rights are?
- e. Do employees feel constrained not to do things people on the outside do freely?

3. Probationary Period for New Employees

Discuss differences between staff and contract requirements and reasons therefor.

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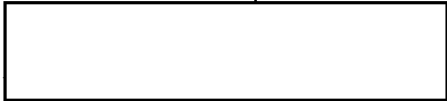


18 NOV 1979

MEMORANDUM FOR: Executive Director/Comptroller

SUBJECT : MAG Recommendation on Agency-wide Selection-Out Procedures

1. The Clandestine Service has now had almost a year's experience in effecting its promotions through impartial panel reviews of every officer's file at each grade. The panels also identify a low percentile of officers in each grade; repetition of this finding by a subsequent panel of entirely different membership subjects the officer to administrative action.
2. MAG understood you to say in your meeting with us on 29 October that the Agency intends to adopt this procedure in all directorates, but that there are no plans to enforce its select-out feature in the other directorates which are not overstrength.
3. MAG urges reconsideration of this decision. We think staying within T/O ceilings and maintaining a quality officer corps are two separate issues. Any organization needs pruning of its marginal employees to maintain its health. The CS would have profited from its present selection-out procedure years ago when it was still growing. We are the only intelligence service in Washington without some form of accepted procedure for selection-out. We believe we owe ourselves a regularized pruning procedure in all directorates and all our officers a clear understanding of how this process will be effected.
4. This recommendation was unanimously endorsed on 17 November by MAG members from all directorates.

  
MAG Co-chairman

25X1

Miriam:

Re Colonel White's suggestion that he and Mr. Coffey get together for lunch before the latter's MAG session, Colonel White is available (as of this moment) on Monday, the 22nd; Wednesday, the 17th; Wednesday, the 24th; Friday, the 19th. (Those are in order of preference as regards his calendar.)

Barbara

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**Remarks:**

Colonel White:

In connection with my evening session with the Management Advisory Group on 24 March, I would appreciate any advice and counsel you could give, particularly on the matter of Selection Out.

 John W. Coffey

25X1

25X1

(over)

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FROM: NAME, ADDRESS AND PHONE NO.

DATE

Deputy Director for Support 7D26 HQS

5 MAR 1971

*Jack*  
Looks like you  
may meet a Gen. Counsel  
for a, b, + c!

Why don't we  
get together for lunch  
a few days before  
your meeting.



**CONFIDENTIAL**

1. Selection Out Procedures

Discuss MAG recommendation as outlined in memo to EX/DIR dated 18 November 1970 (copy attached).

2. Employee Rights

- a. What are "rights"?
- b. When does a benefit become a right?
- c. Does the relationship change with longevity?
- d. Do employees know exactly what their rights are?
- e. Do employees feel constrained not to do things people on the outside do freely?

3. Probationary Period for New Employees

Discuss differences between staff and contract requirements and reasons therefor.

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18 NOV 1979

MEMORANDUM FOR: Executive Director/Comptroller

SUBJECT : MAG Recommendation on Agency-wide Selection-Out Procedures

1. The Clandestine Service has now had almost a year's experience in effecting its promotions through impartial panel reviews of every officer's file at each grade. The panels also identify a low percentile of officers in each grade; repetition of this finding by a subsequent panel of entirely different membership subjects the officer to administrative action.

2. [MAG understood you to say in your meeting with us on 29 October that the Agency intends to adopt this procedure in all directorates] but that there are no plans to enforce its select-out feature in the other directorates which are not overstrength.

3. MAG urges reconsideration of this decision. We think staying within T/O ceilings and maintaining a quality officer corps are two separate issues. Any organization needs pruning of its marginal employees to maintain its health. The CS would have profited from its present selection-out procedure years ago when it was still growing. We are the only intelligence service in Washington without some form of accepted procedure for selection-out. We believe we owe ourselves a regularized pruning procedure in all directorates and all our officers a clear understanding of how this process will be effected.

4. This recommendation was unanimously endorsed on 17 November by MAG members from all directorates.

25X1

*This is not entirely correct. I thought I said that we were watching the CS procedure and that it or something like it might be adopted for other directorates. I thought I made it clear (which obviously I did not) that there were no plans to adopt the same.*

MAG Co-chairman

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16/71

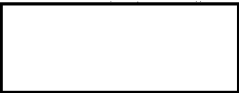
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**Executive Director -Comptroller**  
7D59 HQS

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STAT

  
**John W. Coffey**

15 MAR 1971

STAT

**Deputy Director for Support 7D26 HQS** 

X

DD/S:JWC:maq (15 Mar 71)

Distribution:

Orig - ExDir w/Att -- *BY HAND*

~~1~~ - DD/S Subject w/Att

1 - DD/S Chrono

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CONCURRENCE		INFORMATION	SIGNATURE
<b>Remarks:</b> Larry:  Having been invited to meet with the Management Advisory Group the week of 22 March to discuss the items on the attached list, I obviously need some help. I would appreciate any ideas and/or facts you might be able to provide, particularly in connection with the Employee Rights subject.  25X1 <span style="border: 1px solid black; display: inline-block; width: 100px; height: 30px; vertical-align: middle;"></span> 25X1 John W. Coffey			
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FROM: NAME, ADDRESS AND PHONE NO.			DATE
Deputy Director for Support 7D26 HQS <span style="border: 1px solid black; display: inline-block; width: 50px; height: 15px; vertical-align: middle;"></span>			11 MAR 1971
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FORM NO. 237 Use previous editions

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DD/S:JWC:maq (11 Mar 71)

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COMMENT	FILE	RETURN	
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<b>Remarks:</b> Harry: Help! MAG has asked me to discuss the items on the attachment with them during the week of 22 March. I told the MAG emissary that it seemed more appropriate to have the General Counsel and the Director of Personnel to be their discussants on these subjects but I am still on the hook. I would appreciate your advice and counsel on all subjects. I have also given a copy to the General Counsel requesting his particular assistance on the Employee Rights items. 25X1 <div style="border: 1px solid black; width: 150px; height: 30px; margin: 10px auto;"></div> 25X1 John W. Coffey			
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Deputy Director for Support 7D26 HQS			
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FORM NO. 1-67 237 Use previous editions

(40)

DD/S:JWC:maq (11 Mar 71)

Distribution:

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1 - DD/S Subject w/Att

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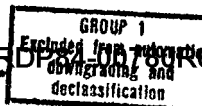
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4. This recommendation was unanimously endorsed on 17 November by MAG members from all directorates.

[Redacted Signature]

MAG Co-chairman

25X1

SECRET

**CONFIDENTIAL**

1. Selection Out Procedures

Discuss MAG recommendation as outlined in memo to EX/DIR dated 18 November 1970 (copy attached).

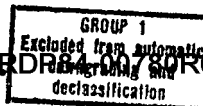
2. Employee Rights

- a. What are "rights"?
- b. When does a benefit become a right?
- c. Does the relationship change with longevity?
- d. Do employees know exactly what their rights are?
- e. Do employees feel constrained not to do things people on the outside do freely?

3. Probationary Period for New Employees

Discuss differences between staff and contract requirements and reasons therefor.

**CONFIDENTIAL**



File 116

18 NOV 1979

MEMORANDUM FOR: Executive Director/Comptroller

SUBJECT : MAG Recommendation on Agency-wide Selection-Out Procedures

1. The Clandestine Service has now had almost a year's experience in effecting its promotions through impartial panel reviews of every officer's file at each grade. The panels also identify a low percentile of officers in each grade; repetition of this finding by a subsequent panel of entirely different membership subjects the officer to administrative action.

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[Redacted Signature]

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MAG Co-chairman

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## TRANSMITTAL SLIP

DATE

TO:

Deputy Director for Support

ROOM NO.

7D24

BUILDING

Hqs.

REMARKS:

Also attached for your  
information is a listing of  
MAG participants.

*Microfilm  
pls put with other papers*

STAT

FROM:

EA/Executive Director

ROOM NO.

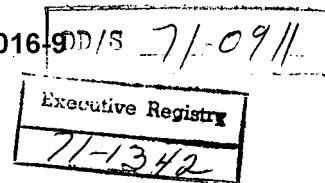
7D59

BUILDING

Hqs.

FORM NO. 241  
1 FEB 55REPLACES FORM 36-8  
WHICH MAY BE USED.

(47)



15 March 1971

25X1

MEMORANDUM FOR: [REDACTED]  
Chief, DCI Security Staff

SUBJECT : MAG Meetings, 17 and 24 March 1971

1. The MAG schedule for the month of March includes:

- a) A working session at 1730 hours on Wednesday, 17 March, in the Director's Conference Room.
- b) A dinner meeting with the DDS at 1730 hours on Wednesday, 24 March. Following dinner the group will convene in the Director's Conference Room.

2. MAG participants are responsible for policing the area of any classified materials and securing them following their meetings. I should appreciate a double-check of the Director's Conference Room by the Security Office, and I have asked [REDACTED] to call the Security Duty Officer [REDACTED] upon completion of their meetings.

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[REDACTED]  
Assistant to the Executive Director

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cc:

[REDACTED]  
AO/DCI  
DDS

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Approved For Release 2003/04/29 : CIA-RDP84-00780R004000040016-9

Next 4 Page(s) In Document Exempt

Approved For Release 2003/04/29 : CIA-RDP84-00780R004000040016-9



**CONFIDENTIAL**

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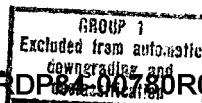
2. Employee Rights

- a. What are "rights"?
- b. When does a benefit become a right?
- c. Does the relationship change with longevity?
- d. Do employees know exactly what their rights are? ✓
- e. Do employees feel constrained not to do things people on the outside do freely?

3. Probationary Period for New Employees

Discuss differences between staff and contract requirements and reasons therefor.

**CONFIDENTIAL**



116 16

10 21 79

MEMORANDUM FOR: Executive Director/Comptroller

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[Redacted Signature]

MAG Co-chairman

25X1

SECRET



17 March 1971

MEMORANDUM FOR: Mr. Coffey

SUBJECT : Your Meeting with the MAG

Jack:

As you have already observed, this is a most difficult package the MAG has handed you. I know that you have asked Larry and Harry to give you some input. For whatever they may be worth, let me offer the following thoughts:

Selection Out Procedures

The MAG paper to Colonel White speaks of an understanding they thought they had from ExDir regarding the adoption of a procedure. I wonder if this could be a confused reference to the PMMP 70's proposal since inherent in that not only is the ranking for succession and for promotion but also, necessarily, the ranking for non-promotion. As to the enforcement of a select-out feature, I think that, rightly or wrongly, this would become an intrusion into the parochial authorities of the Deputies as Heads of their Career Services -- an intrusion which would be resented unless the Agency is to determine that the basic rules on the responsibility for career management are changed. I'm not saying they shouldn't be, and the MAG might very well themselves consider whether a monolithic approach to career management is desirable.

Certainly we can't disagree with the point they make that "staying within T/O ceilings and maintaining a quality officer corps are two separate issues". As you know, I personally feel we have done too little of the weeding out of marginal employees. I think our failure to do so

has been a kind of cowardness in some cases and in others a misguided compassion. I say misguided because I am confident that, in many cases, if an individual were forced out and forced to find other employment, he might very well be more successful and probably happier.

Now, as to employee rights --

The MAG has not defined the word and perhaps in their first question are in fact asking for a definition. Something like the following might be a reasonable way to put it.

A right is an interest, entitlement or procedural treatment which is not subject to administrative judgment but can be determined by fact. I'm not sure what the General Counsel will say in this regard. Having attempted that definition, I would then respond to the first question "What are rights?" with four categories:

The first are those human rights which are inherent in our society. A homely example -- the right to expect to be treated courteously.

The second are constitutional rights, with specific emphasis on the first ten amendments of the Bill of Rights.

The third are legal guarantees granted by statute. A simple example -- the Federal Employees Group Life Insurance provides the right to participate in a Government-wide insurance program.

Finally, employee rights which derive either from the Agency regulations -- an example here is that a man's Career Service designation can't be changed without his concurrence -- or derive from custom. It may be that our practice of consulting with an individual before we change his assignment is so embedded in custom as to make it right. This doesn't mean that the reassignment will be made only with the employee's concurrence. His objections may be ignored, but nonetheless, by practice, we discuss it with him.

"When does a benefit become a right?" - A benefit may be a right ab initio. The law or regulation which provides the benefit, as for instance the FEGLI illustration above, may make it a right. I think it could be argued that a benefit becomes a right when it has been included as a consideration in establishing some other right. For the moment I can't think of an illustration within the Agency, but in the industrial union oftentimes fringe benefits are valued and included in the equation when setting wage scales. This in my argument would give the benefit the quality of a right. Finally, I think a benefit becomes a right when, by usage and custom, it has been established to the point that it has never not been given.

"Does the relationship change with longevity?" - Perhaps never by longevity per se but certainly there are rights which devolve from periods of service, and a simple illustration, of course, is home leave. The rate of annual leave accumulation is also tied to length of service. Another illustration: the post retirement coverage under UBLIC is by contract tied to, in this instance, ten years of enrollment.

"Do employees know exactly what their rights are?" - Hell no! The operative word here is "exactly" and I'm sure that even with great diligence we would find it difficult to identify and define in exact terms all employee rights in the Agency and this says nothing about folklore which can, and I'm afraid often does, confuse understanding.

"Do employees feel constrained not to do things people on the outside do freely?" - I think the very fact that the question is asked shows that the MAG recognizes that this is indeed the case. If nothing else, we're constrained not to talk about our jobs. Yet this is a common American habit. We offer our name and observations on the weather and then talk about either sports or our jobs. A little more subtly, I think that most employees feel as I do, which is restricted in my outside social contacts and tend to find my friends, golf partners, or what have you within the Agency.

Probationary Period for New Employees

The Director of Personnel should respond specifically to this but the basic principle operating here, of course, is that there are more rigid requirements for staff employees because of the explicit and implicit benefits and rights which derive from employee status, particularly that of tenure, while the contract, though extending many of the same or initial benefits and rights, does so only subject to the term of the contract which in addition,<sup>70</sup> being for a fixed period, has what amounts to a no cause termination clause.



Robert S. Wattles

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## **28. INVOLUNTARY SEPARATIONS**

- Γ a. **SCOPE.** The provisions of this paragraph apply to all cases involving the proposed involuntary separation of staff employees and staff agents from the Agency, in accordance with the policies set forth in subparagraph c below, except cases specifically within the scope of [ ] Involuntary separations fall into two broad categories as follows:

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- (1) All those situations leading to a determination by the Agency of unsuitability of the employee such as failure to meet the work and efficiency requirements of the Agency, failure during the initial twelve-month trial period to demonstrate the qualifications required for regular assignment, failure of a Career-Provisional Employee to meet career employment standards at the completion of the provisional period, failure to meet Agency security standards, inability to meet Agency medical standards, abandonment of position, insubordination, inattention to duty, poor attendance, misuse of official funds, a criminal act, personal misconduct, or other evidence of unsuitability.
- (2) Those situations where the separation is made for the benefit of the Agency without involving unsuitability of the employee concerned, such as in subparagraphs d(6) and (7) below.

- L b. **STATUTORY AUTHORITY OF THE DIRECTOR OF CENTRAL INTELLIGENCE.** The Director of Central Intelligence is empowered to terminate the employment of any Agency employee when he determines that such action is necessary or advisable in the interests of the United States. Termination action is accomplished under the authority of section 102(c) of the National Security Act of 1947 quoted below:

Notwithstanding the provisions of Section 6 of the Act of August 24, 1912 (37 Stat. 555), or the provisions of any other law, the Director of Central Intelligence may, in his discretion, terminate the employment of any officer or employee of the Agency whenever he shall deem such termination necessary or advisable in the interests of the United States, but such termination shall not affect the right of such officer or employee to seek or accept employment in any other department or agency of the Government if declared eligible for such employment by the United States Civil Service Commission.

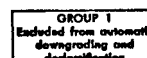
- c. **POLICY.** Involuntary separations will normally be effected in accordance with the procedures suggested below. These should be followed insofar as they are suitable but it is recognized that there may be circumstances in any one case that make these precise procedural steps impractical or undesirable and in such situations the case will be handled in a manner conforming to those circumstances. Furthermore, in order to meet the exacting responsibilities placed upon the Agency and pursuant to his statutory authority, the Director of Central Intelligence may separate any employee immediately and without regard to any suggested procedural steps when he deems it necessary or advisable in the interests of the United States.

d. **CRITERIA**

- (1) **WORK AND EFFICIENCY.** An employee who fails to meet the work and efficiency requirements of his Career Service or fails to adequately perform the duties of the position to which he is assigned should be considered for separation from that Career Service and possibly the Agency. If the Deputy Director or Head of Career Service having jurisdiction concludes that the individual should be separated from the particular Career Service,

→ Revised: 21 December 1970 (589)

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**PERSONNEL**

he will forward the case with all pertinent documentation to the Director of Personnel for further processing as set forth in subparagraph f below.

- (2) **THE FIRST-YEAR TRIAL PERIOD.** Deputy Directors and Heads of Career Services are responsible for identifying employees under their jurisdiction who do not successfully complete the first-year trial period. The Deputy Director or Head of Career Service, or his representative, will notify the Director of Personnel before the close of the first-year trial period when an employee has failed to meet the applicable employment standards.

- (3) **THE THREE-YEAR PROVISIONAL PERIOD.** Heads of Career Services are responsible for evaluating the suitability of each Career-Provisional Employee who is otherwise eligible for conversion to Career Employee status and, with the approval of the Deputy Director concerned, for recommending termination, of the employee's Career-Provisional appointment if he has failed to meet the applicable career employment standards. (HR

- (4) **SECURITY AND MEDICAL STANDARDS.** The Director of Security and the Director of Medical Services will make appropriate recommendations to the Director of Personnel when an employee does not meet Agency security or medical standards.

- (5) **STANDARDS OF CONDUCT.** The Agency standards of employee conduct are prescribed in [redacted] Deputy Directors will ensure that appropriate officials take or initiate corrective or disciplinary action as necessary or, if warranted, forward a recommendation for separation to the Director of Personnel if an employee fails to meet Agency standards of conduct. Whenever the Director of Personnel is informed that an employee has failed to meet Agency standards of conduct, he will, if the matter is of a serious nature, review the case with the Deputy Director concerned and, as appropriate, the Head of the employee's Career Service. He may, in coordination with the Deputy Director concerned, conduct an investigation if this is required. If the Director of Personnel concludes that the individual should be separated, he will forward his recommendation with appropriate documentation through the Deputy Director concerned and the Head of the employee's Career Service to the Director of Central Intelligence.

- (6) **SELECTION OUT.** It is the policy of the Agency to improve the over-all level of employee performance by separating those employees whose qualifications and potential are low in comparison with those of other employees of the same grade and occupational category. Deputy Directors and Heads of Career Services are responsible for determining the need for, and recommending, the separation of personnel under their jurisdiction.

- ↳ (7) **OTHER.** In addition to (1) through (6) above, employees may be terminated upon a finding by the Director of Central Intelligence that such termination is necessary and advisable in the interest of the Agency or for such other reasons as the Director may find will advance the efficiency of the Agency.

**e. RESPONSIBILITIES**

- (1) **HEADS OF CAREER SERVICES OR DEPUTY DIRECTORS.** Heads of Career Services or Deputy Directors are responsible for identifying employees under their jurisdictions who should be considered for separation. They or their designated representatives will review each case with the Director of Personnel or his designated representative and, when deemed appropriate, recommend to the Director of Personnel termination of the individual's employment.